

## **REMARKS.**

Claims 1 and 13 have been amended to remove the rejections under §102. Claims 3, 5, 14 and 17 have been deleted. All remaining claims are now considered to be in condition for allowance.

### **Rejection of claims 1 and 13 under 35 U.S.C. §102.**

The rejection of claims 1 and 13 under 35 U.S.C. §102 is respectfully traversed to the extent that such rejection applies to newly amended claims 1 and 13.

1. The Examiner states: "It is apparent that for there to be a kit in order to have the kissing game as described in Guess the Flavor." The Examiner is trying to assert that Guess the Flavor has something that it does not have. Guess the Flavor does not disclose the use of a kit. Guess the Flavor is a website that contains instructions for playing a game. The game suggests that the players obtain certain of a variety of food goods. Guess the Flavor does not provide any of the food goods, solely the instructions. Since Guess the Flavor does not provide anything other than the instructions, it cannot be providing a kit, by definition.

2. Guess the Flavor suggests the purchase of certain over-the-counter food goods, such as candies and/or food items. As stated in newly amended claims 1 and 13:

"1. A novelty kit for producing an oral sensation during deep kissing, the novelty kit comprising:

- a) a first substance to be placed on the tongue of a first person, the first substance in the form of a solute; and
- b) instructions for use of the first substance with a second person.

"13. A method for producing an oral sensation during deep kissing, the method comprising:

- a) placing a first substance in the form of a solute and having an identifiable taste on the tongue of a first person; and
- b) instructing the first person on use of the first substance with a second person."

The instant invention calls for the use of a solute, not a food item. Solutes of food items are not found in grocery stores. Solutes cannot be purchased as over the counter food items.

### **Rejection of claims 2, 5, 6, 9-12, and 19-22 under 35 U.S.C. §102.**

The Rejection of claims 2, 5, 6, 1-12, and 19-22 under 35 U.S.C. §102 is respectfully traversed to the extent such rejection applies to newly amended independent claims 1 and 13. Claims 2, 5, 6, and 9-12 depend on newly amended independent claim 1, and claims 19-22 depend on newly amended independent claim 13. Since newly amended independent claims are now considered in condition for allowance, the claims dependent on such newly amended independent claims are also considered in condition for allowance.

Regarding claims 5 and 16, it should be noted that nowhere in Guess the Flavor is

any teaching that a substance may be placed on tongue of the second person, and effectively comingling the tastes. Therefore, claims 5 and 13 cannot be anticipated.

Claims 6, 8, 10-12 and 18, 20-22 depend on dependent claims 5 and 16 respectively. Since claims 5 and 16 requires the placement on the tongue of the second person of a solute, so also do the dependent claims 6, 8, 10-12 and claims 18, 20-22, and therefore cannot be anticipated by Guess the Flavor.

**Rejection of claims 3, 4, 7, 8, 14, 15, 17 and 18 under 35 U.S.C. 103(a).**

Rejection of claims 3,4,7,8,14,15,17, and 18 under 35 U.S.C. 103(a) is hereby traversed to the extent that said claims are dependent on newly amended independent claims 1 and 13. Regarding such claims the Examiner states

“AAPA teaches the kit wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in the form of a solute containing an extract of the second substance; where the solute is water based (see Background of the Invention).”

The Applicant strongly traverses such statement. The Background of the Invention teaches, at page 1, lines 24-26 that:

“It is well known that there are a variety of extracts available on the market that provide various tastes, common of which is vanilla. However, these extracts are concentrated, and are not suitable for the uses contemplated in the invention.”

This is the only statement regarding extracts in the Background of the Invention. Certainly, there is no teaching whatsoever about “a solute containing an extract of the first substance.” Further, there is no teaching whatsoever about the “second substance is in the form of a solute containing an extract of the second substance; where the solute is water based.” The Examiner, in his zeal to reject the claims of the invention, has stretched the meaning of the words of the background.

**Response to Arguments.**

The Examiner has made several statements with regard to his Response to Arguments. To wit:

1. [F]irstly the kit as used in the claims was interpreted by the Examiner as items needed and involved in the kissing game. The word kit as used in the claim means a set of materials, items, tools, etc. Examiner notes that items in par.2 of reference are a set of items needed for the kissing game.

Response: The kit as described by the Applicant requires the instructions and the solutes.

2. Secondly Examiner points to Applicant that taste is the most important oral sensation, which is taught by the reference.

Response: How can the Examiner assert that taste is more important than mood in determining importance of oral sensations. Proof?

3. Thirdly, the various foods can and has to be eaten at different times because only then can the idea of identifying different taste be useful i.e. if only one food/item is used and eaten, it defeats the purpose of guessing what food/item is in the mouth.

Response: The invention is not directed to eating food items, as is Guess the Flavor. The Examiner is missing the point of the game.

4. Fourthly although the applicant does not teach various food items eaten by one set of participants, the reference teaches placing a substance in the mouth of the first person, which is claimed by the applicant.

Response: The invention is not directed to eating food items, as is Guess the Flavor. The Examiner is missing the point of the game.

5. In response to the argument that there is no second substance placed on the tongue of the second person in the reference, Examiner notes that it is apparent that for the second person or second team's turn during the game, the second substance has to be placed in the second person.

Response: The point of the game, and as claimed, is to place solutes on the tongues of a first and second party simultaneously, and the first and second person kissing, thereby comingling the sensations. The Examiner is missing the point of the game.

6. In response to the argument about the instructions identifying the moods, it is apparent to the Examiner that a bitter food makes the eater frown which implies that the taste of the food item used determines the eaters mood; also the Examiner points the Applicant to the background of invention in the Applicant's admitted prior art.

Response: The Examiner is over-simplifying the game. Applicant's game is a matter of identifying taste sensations/mood. Applicant' admitted prior art does not describe in any way the limitations of the invention.

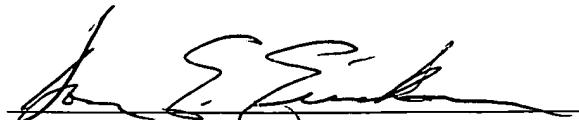
## **Conclusion.**

Claims 1 and 13 have been amended to clearly define "solutes" at the element creating the taste sensation, and that such solutes are not anticipated or rendered obvious by the prior art reference. Therefore, applicant considers claims 1 and 13 to be in condition for allowance. Therefore Applicant considers all pending claims to be in condition for allowance.

Entry of this amendment is respectfully requested for the purpose of placing this application in condition for allowance or for the purpose of reducing the number of disputed issues for appeal.

Should the Examiner not be disposed to enter this Amendment for the purpose of allowance, a telephone interview for the purpose of discussing the issues not resolved by this Amendment is respectfully requested.

Respectfully submitted,



Don E. Erickson  
Attorney for Applicant  
Law Office  
7668 El Camino Real, Ste. 104 #627  
La Costa, CA 92009  
760-918-0520

Date: March 31, 2008

**Certificate of Service**

I hereby certify that this **Amendment and Response** is being deposited with the United States Postal Service, postage prepaid, on the date indicated above and is addressed to "Box AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450."

Signed:   
Representative: Don E. Erickson

Date of Signature: March 31, 2008